

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) DISMISSAL AND CASE
5 MUR 6350) CLOSURE UNDER THE
6 Mark Reed for Congress and) ENFORCEMENT PRIORITY SYSTEM
7 Norman Paul Devereaux, as treasurer)
8 Mark Steven Reed)
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring
12 criteria to allocate its resources and decide which cases to pursue. These criteria include, but are
13 not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the
14 type of activity and the amount in violation, (2) the apparent impact the alleged violation may have
15 had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends
16 in potential violations of the Act, and (5) development of the law with respect to certain subject
17 matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-
18 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to
19 dismiss certain cases. The Office of General Counsel has scored MUR 6530 as a low-rated matter
20 and has also determined that it should not be referred to the Alternative Dispute Resolution Office.
21 This Office therefore recommends that the Commission exercise its prosecutorial discretion to
22 dismiss MUR 6530.

23 This matter is the second complaint filed by the complainant Sheldon Kadish against Mark
24 Steven Reed, an unsuccessful candidate from California's 27th Congressional District, and his
25 campaign committee, Mark Reed for Congress and Norman Paul Devereaux, in his official
26 capacity as treasurer ("the Committee") (collectively, "respondents"). Here, Mr. Kadish alleges
27 that the respondents committed two separate violations of the Federal Election Campaign Act of
28 1971, as amended ("the Act").¹

29 First, according to the complainant, the Committee accepted a total of \$3,200 in cash
30 contributions from three contributors, in violation of 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1),

¹ In the earlier matter, MUR 6321 (attached), Mr. Kadish alleged that the respondents failed to file campaign disclosure reports and include disclaimers on campaign materials, as required by the Act and underlying regulations, see discussion *infra*. On November 3, 2010, the Commission voted to dismiss MUR 6321 by a vote of 6-0.

1 which prohibit candidate committees from accepting more than \$100 per contributor in cash.
2 Specifically, according to the complainant, the Committee's 2010 12-Day Pre-Primary and July
3 Quarterly Reports include four reported contributions that bear the notation "cash"—\$1,000 from
4 David Plumb on July 25, 2009; \$510, again from Mr. Plumb, on March 27, 2010; \$510 from Helen
5 Walker on March 25, 2010; and \$1,000 from Larry Smith on June 29, 2010.

6 Second, the complainant alleges, as he did in MUR 6321, that the Committee failed to file
7 its financial closure reports timely. In the instant matter, Mr. Kadish asserts that Mr. Reed attained
8 "candidate" status on or around April 6, 2010, pursuant to 2 U.S.C. § 431(2)(A), by receiving
9 contributions exceeding \$5,000 at that time. Therefore, according to the complainant, the
10 Committee's first financial disclosure report, its 12-Day Pre-Primary Report, should have been
11 filed no later than May 27, 2010, or twelve days before California's June 8, 2010 primary election,
12 as set forth in 2 U.S.C. § 434(a)(2)(A)(1). Instead, according to the complainant, the Committee
13 failed to file the report until July 14, 2010, or 48 days late.

14 In response to the complainant's allegation concerning excessive cash contributions, the
15 Committee's treasurer, Norman Paul Devereaux, asserts that Mr. Larry Smith's \$1,000
16 contribution had been made by check, and encloses what appears to be a photocopy of Mr. Smith's
17 contribution check enclosed with the response. With respect to Ms. Walker and Mr. Plumb, Mr.
18 Devereaux acknowledges that, "[o]wing to my own ignorance of the relevant law," he had accepted
19 excessive cash contributions from Ms. Walker and Mr. Plumb on behalf of the Committee. He
20 states, however, that on August 31, 2010, the Committee refunded the portions of those
21 contributions that exceeded \$100. Specifically, according to Mr. Devereaux, the Committee
22 refunded \$410 to Ms. Walker and \$1,410 to Mr. Plumb on August 31, 2010.

23 With respect to the Committee's allegedly late-filed Pre-Primary Report, Mr. Devereaux
24 refers the Commission to his response in MUR 6321, in which he acknowledged that the
25 Committee's 12-Day Pre-Primary Report was filed untimely, due to what he described as his own

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1 "ignorance" of the relevant filing requirements. Nonetheless, Mr. Devereaux stated that the
2 Committee's next required report, its 2010 July Quarterly Report, was filed timely, on July
3 15, 2010, and that both reports included all required disclosures.

4 Pursuant to 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1), no person may make a cash
5 contribution of more than \$100 to a candidate for federal office. Any federal committee who
6 receives an excessive cash contribution must "promptly return the amount over \$100 to the
7 contributor." 11 C.F.R. § 110.4(c)(2). As conceded by the Committee, it accepted cash
8 contributions, which exceeded the legal limit, in violation of 2 U.S.C. § 441g and 11 C.F.R.
9 § 110.4(c)(1). A review of the Committee's 2010 October Quarterly Report, covering the time
10 period July 1, 2010 through September 30, 2010, discloses two refunds to Mr. Plumb of \$900 and
11 \$510, both on August 31, 2010. However, no refund to Ms. Walker is reported, although such
12 would appear to be required under 11 C.F.R. § 110.4(c)(2).²

13 It appears that the dollar amount of the violations was relatively low, and that the
14 Committee also took remedial steps to refund the excessive portion of certain cash contributions.
15 Accordingly, under EPS, the Office of General Counsel has scored MUR 6350 as a low-rated
16 matter and therefore, in furtherance of the Commission's priorities as discussed above, the Office
17 of General Counsel believes the Commission should exercise its prosecutorial discretion and
18 dismiss this matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office
19 recommends that the Commission remind Mark Reed for Congress and Norman Paul Devereaux,
20 in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441g and
21 11 C.F.R. § 110.4(c)(1) concerning excessive cash contributions, and the requirements
22 under 11 C.F.R. § 110.4(c)(2) concerning the prompt refund of such contributions. As
23 the Commission has already reminded Mark Reed for Congress and Norman

² The Committee's 2010 October Quarterly Report lists a total of \$1,820 in refunds on the summary page under column A. However, the Committee only itemized \$1,410 in refunds to Mr. Plumb and did not itemize the remaining \$410, which the Committee has stated was the amount refunded to Ms. Walker.

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Paul Devereaux, in his official capacity as treasurer, concerning the timely filing of its financial disclosure reports, we do not recommend doing so again.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6350, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Mark Reed for Congress and Norman Paul Devereaux, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1) concerning excessive cash contributions, and the requirements under 11 C.F.R. § 110.4(c)(2) concerning the prompt refund of such contributions.

Christopher Hughey
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Date 1/12/11

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